On April 6 Miller and Tittle filed unfair labor practice charges with the Board against Respondent Union, Meehleis, and Yuba.[4]

Thereafter Miller returned to Meehleis and Yuba on April 17. Rex Rogers at Meehleis, project superintendent who did the hiring for Meehleis, told Miller, who did not identify himself when he asked for a welding job,[5] that Meehleis did not need any welders at that time.[6]

This same process was repeated at Meehleis on May 18 and 26 and on June 5, 23, and 30.

On April 24 Miller returned to Yuba at the same time that National Labor Relations Board Attorney Crawford happened to be in the Yuba office investigating Miller's charge. Crawford introduced Miller to Office Manager Snow and suggested that Yuba give Miller the welders' test, a suggestion Snow passed on to Yuba Welding Superintendent Gray who gave such tests.

Miller returned to Yuba on April 26 and asked Gray to give him the welders' test. According to Miller, Gray refused to do so on the ground that Miller did not belong to Local 321 and so he could not give Miller the test.

Despite this alleged refusal Miller was back at Yuba on May 1 again asking Gray to be given the welding test. Miller testified that he still thought that he "might be able to talk" Gray into giving him the test.[7] In fact Gray did give Miller the welders' test that day. Miller failed the test.

Miller returned to Yuba and saw Gray again on June 5, Gray stated that he could do nothing for Miller. A welder on the Yuba project had to carry his certification as a welder with him at all times during work so that said certification could be inspected by the U.S. Corps of Engineers. No welding could be done without that certification. Without such a certification Gray could not employ Miller as a welder.

On June 5 Gray gave Miller the welding test again. Again Miller failed.

The Conclusions

The evidence in this case affirmatively proves that: (1) No illegal "arrangement" existed between the Respondents; (2) no illegal "practice" was maintained among the Respondents; (3) Respondent Union was not the "sole source" of welders for Respondent Companies; and (4) Miller could not, and did not, qualify for the only job he was asking for on this project, to wit, welding.

For the above reasons, the Trial Examiner will recommend that this complaint be dismissed in its entirety.

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[4] Tittle eventually was employed by Meehleis and dropped his charges

[5] Miller testified that he always asked only for a welding job. He admitted that welding was the only work he could do as he was not a rodman

[6] The record shows that Meehleis did not hire a welder until April 24.

[7] If Gray had been as definite about the need for union membership in order to give the test as Miller's testimony of his meeting with Gray on April 26 would indicate, Miller was either highly optimistic when he returned on May 1 or else his testimony regarding the April 26 meeting was at least exaggerated The only other references to unions were supposedly made on March 22 by unidentified individuals

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Indiana Limestone Company, Inc. *and* Federated Council Limestone Trades of Indiana, AFL–CIO

Indiana Limestone Company, Inc. *and* Local Lodge No. 599, International Association of Machinists, AFL–CIO. *Cases Nos. 25–CA–1282 and 25–CA–1282–2. March 29, 1962*

DECISION AND ORDER

On June 13, 1961, Trial Examiner Alba B. Martin issued his Intermediate Report in the above-entitled proceeding, finding that the

Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the entire record in this case, including the Intermediate Report, the exceptions, and the brief, and finds merit in the Respondent's exceptions. The Board therefore adopts the Trial Examiner's findings and conclusions only to the extent consistent herewith.

We agree with the Trial Examiner that the Respondent was a member of Indiana Limestone Industry Industrial Relations Committee [1] and had engaged in multiemployer bargaining through the Committee with the Federated Council Limestone Trades of Indiana, AFL–CIO.[2] However, we do not agree that the facts of this case support the conclusion that the Respondent therefore violated Section 8(a)(5) of the Act by refusing to execute the 1960 agreements negotiated by the Committee and the Council.

For many years the Committee has represented its members [3] in collective bargaining with the Council and other labor organizations. The Respondent was a member of and participated in such bargaining through the Committee and its predecessor from 1937 through 1946 and from 1952 until July 15, 1960, the date of its disputed withdrawal in the instant case, with two exceptions set forth below. However, it is clear that, except from 1955 to 1957, the Committee has had no authority to bind its members or to execute any agreement on their behalf; any agreement reached has been subject to approval of each of the members.[4] Similarly, the Council has negotiated on behalf of its constituent members but any agreement reached has been subject to the approval of each member. The pattern has been for the Committee and the Council to agree on terms, after which each polled its

[1] Herein called the Committee.

[2] Herein called the Council. The Council is composed of International Association of Marble, Slate and Stone Polishers, Rubbers, and Sawyers, Tile and Marble Setters' Helpers and Marble Mosaic Terrazo Workers' Helpers, Local 93 and Local 89, AFL–CIO; Quarry Workers, D.A.L.U. #21471, AFL–CIO, and Quarry Workers, D.A.L.U. #21469, AFL–CIO, herein referred to as the two Quarry Workers Locals; International Union of Operating Engineers, Local 850, AFL–CIO, referred to herein as Engineers; International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local 1059, AFL–CIO; and International Association of Machinists, AFL–CIO, herein referred to as the IAM.

[3] The membership of the Committee has fluctuated, with 18 to 24 companies participating at various times, of whom approximately 13 apparently participated in all 6 negotiations between 1954 and 1960. Of these 13, the 3 withdrew during the course of one or more of those negotiations.

[4] In 1955, 23 member companies entered an agreement, the text of which is set forth in the Intermediate Report, giving the Committee irrevocable authority to bind said members in negotiations and to enter into binding contracts on their behalf.

members to secure their approval, and individual contracts were then signed between each company and each union which indicated approval.

Although almost all the participating companies and unions executed the resulting contracts, there have been instances throughout the years when individual companies and unions have refused to do so. And there have been many withdrawals by both unions and companies during the course of negotiations, particularly since about 1954. Thus, in 1954 two companies, including the Respondent, withdrew about halfway through the negotiations and thereafter negotiated to separate contracts with a number of the unions. In 1955 the said two companies again participated in group bargaining but, notwithstanding that the 1955 binding authority agreement was in effect, the Respondent met and bargained separately with the two Quarry Workers Locals, who were also acting separately although members of the Council; the Committee and the other unions then went along with the contract reached by such separate bargaining, but one company refused to sign. In 1957 the Committee negotiated with the two Quarry Workers Locals and the Journeymen Stonecutters Association: the two Quarry Workers Locals were not represented by the Council, although members thereof; the Stonecutters is not a member of the Council. In 1958, the Committee negotiated for 24 companies with 4 unions, including the Engineers, a member of the Council; agreement was reached with 3 unions but not with the Engineers; the Engineers thereupon struck 18 of the companies, the other 6 having signed separate contracts.

The alleged violation involved herein occurred during the course of the 1960 negotiations. At that time the Committee represented 23 companies, including the 6 which had signed separately with the Engineers in 1958; and the Engineers were again represented by the Council. Negotiations began May 2, and one company withdrew on May 12. The Respondent withdrew on July 15. On July 25, nine other companies withdrew and negotiated separate contracts with the Stonecutters, although they apparently signed the contracts negotiated by the Committee with the Council.

In addition to the above facts, it is undisputed that shortly before the 1960 negotiations, a council representative discussed with a committee representative the advisability of having a more binding arrangement within each group and between the two groups. The committee representative indicated that the companies probably could not get together,[5] while the council representative indicated that he thought all the unions except the two Quarry Workers Locals could

[5] On September 17, 1959, preparatory to the 1960 negotiations, the Committee's members had overwhelmingly rejected a formal proposal that the Committee bind the members and execute a contract.

agree. Further, before indicating its agreement to the proposed contract terms on July 15, 1960, the Committee polled all its members, and when the Council was informed of the acceptance of those terms and of the Respondent's withdrawal, it was also told that another company had not yet agreed because of the absence of its president from the city. Also, throughout the 1960 negotiations there were frequent open comments which the Council never challenged, to the effect that any company had the right to withdraw. These included the statement by Respondent's president, Mr. Hauck, at the meeting on June 22, affirming the Respondent's support of the Committee but indicating that he, Hauck, would fully inform himself later concerning the negotiations and make such decisions as he felt would be in the Respondent's best interests.

Finally, the Council was fully aware at all times that the Respondent was unwilling to agree to certain work crew or work restriction clauses which were under discussion or to a wage increase and that its acceptance of any ultimate agreement was dependent on the exclusion of such provisions. There is no contention that this position was not taken in good faith or that it was taken solely to avoid reaching an agreement with the Council.[6] And the Council knew that the Respondent's withdrawal and its refusal to execute the agreements were grounded on the inclusion of those very clauses.

On the basis of the above facts and the record as a whole, we are convinced that the parties had negotiated with the understanding that each company and union had retained the right to withdraw from group bargaining at any time and to approve or reject any agreement reached. The Respondent's exercise of this right in accord with such mutual understanding cannot be held to be inconsistent with its duty to bargain in good faith.[7] Accordingly, the Respondent's refusal to execute the 1960 agreements negotiated by the Committee does not constitute a violation of Section 8(a)(5) of the Act.[8] We shall therefore dismiss the complaint in its entirety.[9]

[The Board dismissed the complaint.]

[6] In fact, the Respondent ultimately reached separate contracts with the Council members, "subject to an inconsistent order of the Board."

[7] We do not find that the fact that Respondent's personnel officer, Stigall, continued to act as a member of the negotiating committee after the Respondent withdrew is inconsistent with such withdrawal, under the circumstances of this case. At no time did Stigall purport to have authority to bind the Respondent and he was paid for his services by the Committee.

[8] *Rice Lake Creamery Company*, 131 NLRB 1270 (IR).

[9] *Anderson Lithograph Company, Inc.* and *Jeffries Banknote Company*, 124 NLRB 920, relied on by the Trial Examiner, is inapposite. For, there the company's withdrawal was equivocal, it continued as part of the multiemployer group thereafter, and its attempt to reserve the right of individual approval or rejection of any agreement reached was unilateral and was not in accord with the past practice or the understanding of all parties to the negotiations.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

This proceeding with all parties represented was heard before Alba B. Martin, the duly designated Trial Examiner, in Indianapolis, Indiana, on complaint of the General Counsel and answer of Indiana Limestone Company, Inc., the Respondent. The issue litigated was whether Respondent violated Section 8(a)(1) and (5) of the Act by refusing to sign contracts negotiated by a committee of employers with a group of unions. With permission Respondent and the General Counsel each filed several briefs, which have been carefully considered. An order to show cause, dated March 31, 1961, has been placed in the original exhibit file as Trial Examiner's Exhibit No. 1. A copy of my telegram to the parties dated April 10, 1961, has been placed in the original exhibit file as Trial Examiner's Exhibit No. 2. A stipulation by the Respondent and the General Counsel covering substitutes for several mislaid exhibits has been placed in the original exhibit file as Trial Examiner's Exhibit No. 3. The substitute exhibits have been placed in the original exhibit file in place of the mislaid exhibits, and the duplicate substitute exhibits have been sent to the Regional Office for the duplicate exhibit file.

Upon the entire record, and from my observation of the witnesses, I hereby make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is, and at all times material herein has been, an Indiana corporation, with its principal office and place of business located in Bedford, Indiana, with various plants, quarries, mills, and other facilities in Lawrence and Monroe Counties in Indiana; and is, and has been at all times material herein, engaged at said plants, quarries, and locations in the quarrying, milling, processing, fabrication, sale, and distribution of building stone and related products. During the year ending June 30, 1960, Respondent, in the course and conduct of its business operations, produced, sold, and shipped from its Indiana operations finished products valued in excess of $1 million directly to points outside the State of Indiana. Respondent admitted, and I find, that Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

The following are labor organizations within the meaning of Section 2(5) of the Act: International Association of Marble, Slate and Stone Polishers, Rubbers and Sawyers, Tile and Marble Setters' Helpers and Marble Mosaic Terrazzo Workers' Helpers, Local 93 and also Local 89, AFL–CIO, referred to herein as Local 93 and Local 89; Quarry Workers, D.A.L.U. #21471, AFL–CIO; Quarry Workers, D.A.L.U. #21469, AFL–CIO; International Union of Operating Engineers, Local 850, AFL–CIO, referred to herein as Engineers; International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local 1059, AFL–CIO, referred to herein as Blacksmiths; and International Association of Machinists, AFL–CIO, herein referred to as the Machinists.

Federated Council Limestone Trades of Indiana, AFL–CIO, herein called the Federated Council, is an association of unions in the limestone industry of Lawrence and Monroe Counties in Indiana. The above-named seven unions comprise its membership. The Federated Council negotiates contracts with employers and groups of employers, including the Committee, described below, and holds regular monthly meetings. Each affiliated union pays a per capita tax to the Federated Council for each of its members.

III. THE UNFAIR LABOR PRACTICES

A. *The controlling facts*

For many years Respondent has bargained on a multiemployer basis with other employers in the limestone industry in Indiana. Prior to 1937 there was a Stone Club In 1942 the Stone Industry Industrial Relations Committee was formed. In 1949 this was changed to the Indiana Limestone Institute Industrial Relations Committee. In 1951 this was changed to the Indiana Limestone Industry Industrial Relations Committee (herein called the Committee and the Industry Committee), under which name the Committee has functioned since 1951. Respondent participated in group bargaining through the Committee and its predecessors from 1937

through 1946, and from 1952 until July 15, 1960, with certain exceptions mentioned below. Since 1957 Respondent's personnel director, Thomas O. Stigall, has served as a member and secretary of the Committee, which since 1959 has consisted of 5 men elected by the 18 companies represented at a meeting held September 17, 1959, to get organized for the 1960 negotiations. Respondent is one of the most substantial companies in the group, employing approximately one-half of the employees employed by the group.

Customarily through the years of joint collective bargaining through the Committee with the Federated Council, after terms of agreement have been arrived at, the contracts have been written up by the Committee as individual contracts between each employer and each union and these documents have then been signed by the respective employers and unions. A representative of the Machinists, Logsdon, testified that in 1958, *all* of the companies which participated in the joint bargaining signed the contracts with the Machinists and the "Millworkers" (Local 93 and/or Local 89). Another representative of the Machinists, Mundy, testified that the negotiations end up—without reference to any particular year—with a different document signed by *each* separate company. H. Max Hanna, a member of the Industry Committee for some 5, 6, or 7 years, testified that he did not remember *any* company withdrawing from negotiations (prior to 1960) after the terms of contracts had been agreed upon between the Committee and the Federated Council—except in one instance which is mentioned below. Hanna testified further in substance that at the official signing of the contracts by the Committee and the Federated Council, the union representatives signed an additional 50 or 60 copies, which either the Committee or the unions then presented to the employers for their signatures and return to the appropriate union. From a record which exhaustively treated withdrawals from group bargaining by both unions and companies through the years, it is a fair inference, which I reach, that the record contains *all* of the withdrawals during the long period covered. Upon the above evidence, this inference, and the entire record considered as a whole, I conclude that for many years *almost all* of the companies and unions which entered into joint bargaining through the Committee and the Federated Council from year to year remained in the joint bargaining until the end and executed the written contracts which resulted therefrom. From this it follows, and I conclude, despite certain evidence and Respondent's contentions discussed below, that the overwhelming preponderance of the evidence proved that the employer group in the industry unequivocally manifested a desire to be bound in collective bargaining by group rather than individual action. This conclusion places heavier weight upon the *actions* of the employer group than upon its words, and heavier weight upon the *positive* aspects of its behavior—remaining in group bargaining throughout—than upon the negative aspect—withdrawing.

During the *1960* negotiations Respondent and 22 other companies participated in multiemployer bargaining through the Committee in 12 bargaining sessions with the Federated Council. Bargaining sessions, most of which except the first lasting several hours, were held on May 2, 12, and 19, June 2, 9, 10, 16, 22, 23, and 29, and July 14 and 15. The preceding contracts expired June 30 but by mutual agreement were extended 2 weeks. At the conclusion of the July 15 session, as it was being announced in effect that a meeting of the minds had been reached, it was also announced that Respondent did not agree with the negotiated contracts, was withdrawing from the joint negotiations, and wished to bargain individually with the Federated Council. Refusing to negotiate on that basis the union struck Respondent, and the Federated Council and the Machinists filed the charges herein. All the other companies in the joint negotiations signed the negotiated contract. The General Counsel contended that Respondent's withdrawal was untimely, was not unequivocal, and that its refusal to sign the negotiated contract was a violation of Section 8(a)(5) and (1) of the Act.

In planning for the 1960 negotiations Respondent and the other 22 employers had signed a document dated September 17, 1959, stating: "The following companies will be represented by the Indiana Limestone Industry Industrial Relations Committee for the 1960 negotiations," and on March 22, 1960—shortly prior to the opening of negotiations on May 2—the Committee's secretary had sent this list of 23 employers, including Respondent, to 1 member of the Federated Council's negotiating committee with a covering letter stating:

> Attached is the list of companies to be represented by the Indiana Limestone Industry Industrial Relations Committee requested by you in our conversation of yesterday.

Further, early in the negotiations, during May or early June, when the question arose as to just which companies the Committee was representing, the chairman of

the Committee had shown the committee representing the Federated Council the document of September 17, 1959, quoted above, bearing the signatures of the 23 employers, including Respondent.

Respondent's affiliation with the Industry Committee was not confined to the joint bargaining. It paid agreed-upon dues to the Committee through July 15, 1960, and since 1957 its personnel director, Stigall, has been a member of and secretary to the five-man Committee. He participated in all the 1960 bargaining sessions up to Respondent's withdrawal on July 15; and thereafter, while Respondent was concurrently seeking individual bargaining with the unions through the Federated Council, he helped prepare the written contracts for the Committee and was present at the appointed time for the contract signing ceremony. Stigall continued as a member of and as secretary of the Committee at least until the time of the hearing herein, which was held in November 1960. For his services as a member of the Committee he received (as did each of the members) the sum of $1,000 "per year." This stipend was not tolled when Respondent withdrew from group bargaining on July 15, 1960.

In early June 1960 three members of the Committee, including the chairman, John Fuller, called on Respondent's President Hauck and told him that because of the insistence by Stigall during the negotiations that Respondent was unable to accept work restriction clauses being discussed, they were fearful that Hauck would withdraw his company from the Committee and negotiate alone on its behalf. Hauck told them that up to that point he was satisfied with the Committee's conduct of the negotiations but that he reserved the right to withdraw in the future if he was no longer satisfied. Fuller asked him to notify the Committee prior to doing so. Nobody informed the Federated Council of this conversation From early June to July 15 there were eight bargaining meetings during which, despite any reservations Hauck had, Respondent bargained on a group rather than a single basis.

In addition to the above evidence that Respondent unequivocally manifested a desire to be bound in collective bargaining by group rather than individual action *during the 1960 negotiations,* the action and statement of Respondent's new president at the June 22 bargaining session, which was well along in the negotiations, tended to confirm this. Respondent's president, General C. J. Hauck, Jr., who had assumed that office February 16, 1960, appeared at the June 22 session at the request of the president of one of the other group-bargaining companies (whose personnel manager was one of the five-man Committee). Hauck was requested to appear on the ground that an earlier alleged statement of Hauck's to two union representatives tended to undermine the prestige of the Committee in the negotiations—one of which representatives was on the negotiating committee of the Federated Council. The alleged statement (which on the witness stand Hauck denied making, was in substance that he would let Stigall holler and shout and carry on at the negotiations until a strike was imminent and then he would step in himself and try to settle the matter and get a contract for his company because he did not want a strike. Some 10 witnesses testified concerning what Hauck said to the 2 bargaining committees at the June 22 meeting, the testimony differing principally as to whether Hauck's remarks related only to the present or also to the future. On the entire record I find that Hauck expressed the following ideas: that he had been misunderstood and wished to correct the misunderstanding; that although he was not then fully informed concerning the bargaining negotiations, Stigall was Respondent's representative and he fully supported Stigall and the Committee; and that sometime in the future he would inform himself more fully concerning the negotiations and would then make such decisions as he felt would be in the best interests of Respondent. Thus in this appearance, unsolicited by the union representatives, Hauck announced to them his support of the Committee and thereby his support of group bargaining, and his reference to the future did not detract from that endorsement. His appearance was designed to strengthen the hand and spirit of group bargaining and that is what he accomplished.

A principal bone of contension throughout the 1960 negotiations was the inclusion or exclusion of certain work crew or work restriction clauses. Another issue was the question of a wage increase. Respondent's consistent position, frequently expressed at the negotiations by Stigall, was in opposition to the work restriction clauses. Respondent was also opposed to a wage increase. It was the inclusion in the settlement arrived at July 15 of both the work restriction clauses and a wage increase that caused Respondent on July 15 to refuse to accept the settlement arrangements.

On the evening of July 14, after that day's bargaining session, the chairman of the Committee, Fuller, and the principal spokesman for the Federated Council, Logsdon, met, discussed, and arrived at a possible formula for settling the differences

between the two bargaining groups. This formula included both work restriction clauses and a wage increase. That evening and the following morning Fuller ascertained that all the employers except two would accept that formula—one being out sailing, the other being Respondent. To be kept in mind is that the 2-week extension of the expired contracts ended July 14 or 15.

The following morning, July 15, shortly before the beginning of that day's bargaining session, Stigall delivered to Fuller a letter from Respondent's President Hauck to Fuller, dated July 15, reading as follows:

> DEAR MR. FULLER: Mr. Sakel [1] called me last evening and advised me in substance that you had had a meeting with certain of the International Union representatives, and believed a settlement could be effected if the Industry would agree to the following conditions: certain additional work restrictions similar to those now contained in the Monroe County Quarry Workers' contract; a salary increase of approximately Five Cents (5¢) per year for the current year, and one or two years thereafter; and the agency shop. Bert asked me to let you have my views on this before ten o'clock this morning.
>
> I have considered the matter most carefully, and cannot agree to these conditions.
>
> To me the issue of work restrictions is basic. The Stone Industry will survive, and the prosperity of the Oolitic Stone Belt grow, only to the degree methods, machinery and labor agreements are modernized. In this way alone can costs be reduced to the point where Indiana Limestone will once again be a highly competitive building material.
>
> Present work restrictions at present wages are sufficiently discouraging to getting the work our industry and communities need. Additional restrictions, or higher wages with present restrictions, can only result in eventual destruction of our industry, with widespread loss of jobs and spendable income throughout the District
>
> I am equally as anxious as you and members of your committee to reach a settlement with the unions; a work stoppage helps no one. Therefore it is with genuine regret I cannot accept the terms which the unions apparently agree to at this time. Should you and the members of your committee decide to agree to these proposals, it will be necessary for the Indiana Limestone Company to withdraw from the Employers Industry Bargaining Group, and negotiate in its own interests with the various labor unions

Fuller immediately read this letter to the Committee, including Stigall, but the Committee decided not to announce Respondent's withdrawal at this time because that migh "cause a hardship" upon the Committee in its bargaining with the Federated Council.

The negotiations that day revolved around the Fuller-Logsdon formula of the night before. A Federal mediator was present, and several recesses were taken for each side to consider its positions. Work crews and wage increases remained an issue. Finally, about 4 p.m., a settlement was achieved which involved give and take on both sides, and which included a wage increase and work crew clauses unacceptable to Respondent. At the end Fuller made an announcement to the representatives of the Federated Council which included three points. The order of presentation of the three points was hotly contested in the evidence. In the light of the entire record considered as a whole, I conclude that it is unnecessary to resolve this conflict, inasmuch as all three points were part of the same announcement and were made at virtually the same time in the negotiations. Without regard to order, Fuller: (1) Read a portion of Hauck's letter given above—presumably the last paragraph—and said in substance that Respondent was withdrawing from the joint bargaining; (2) said that he could not speak for Terry Edgeworth (president of one of the companies) because he was out sailing; and (3) said in substance that the Committee had contacted all the rest of the companies and that the final understandings between the Committee and Federated Council were acceptable to all of them. At this point one union representative said they would file an unfair labor practice charge against Respondent for refusing to bargain in good faith. Stigall replied that Respondent had not refused to bargain, that Respondent would meet further with the Unions and continue to negotiate.

July 15 being Friday, the following Monday, July 18, all of the Unions bargaining jointly through the Federated Council struck Respondent. Respondent's brief stated that the strike was terminated on November 21, 1960, "and contracts between

[1] On July 15 Sakel was a member of Respondent's board of directors. Until succeeded by Hauck, he had been president of Respondent

(Respondent) and all of the charging unions were agreed to on November 18, 1960, subject to any inconsistent order of the Board."

The General Counsel contended Respondent's withdrawal was untimely because it came after the other parties had reached a meeting of the minds. Respondent countered that the withdrawal was timely because a meeting of the minds was not reached on July 15 and not until differences between the parties were ironed out in subsequent conferences.

Between July 15 and 28, Stigall and Sebright, another member of the Committee, put into written contracts their version of the understandings reached at the close of the July 15 negotiation session. On July 28, Stigall and Sebright met with representatives of the Federated Council and handed them the proposed contracts for "proof reading." At this meeting, according to an admission in a letter written by Stigall to Respondent's attorney (Respondent's Exhibit No. 28), the Federated Council's principal spokesman, Logsdon, said, "We will take these and go over them; want to get Pete [Harold Lehnen] and Blacksmiths down to have signing of contract. However you can expect us to live by them effective today." Respondent's admission through Stigall's letter continued as follows: "Mr. Logsdon further advised would take these copies back to respective Union Hall, study them, and call John [John Fuller] for signing."

On August 1, the two sides met again (Stigall was absent) and, at the request of the Unions, a number of "corrections" were made in order that the written contracts correctly reflect the understandings arrived at on July 15. As proof that there was no meeting of the minds on July 15, Respondent pointed to the substantive changes in the written drafts before they were signed.

At a last meeting on August 5, the unions and some of the companies met and signed the contracts as corrected at the August 1 meeting. Then, during the next few days, the contracts were presented to the other companies represened by the Committee, for signature. All signed except Respondent.

In the meantime Respondent and the Federated Council met several times but made no progress. The unions insisted that Respondent sign the contract negotiated for it by the Committee, and Respondent offered to bargain on the basis of proposed contracts offered by Respondent on July 28.

Respondent's witness, Sebright, admitted that at the conclusion of the July 15 meeting, the two sides had reached a tentative agreement and that he personally "felt that we would get a contract." The chairman of the Committee, John Fuller, testified that at the conclusion of the July 15 meeting, there was no question in his mind that they would be able to work out agreements with the unions. In substance J. Max Hanna, another member of the Committee, testified that at the conclusion of this meeting he understood that the parties had reached a meeting of the minds. Respondent admitted in its answer that on July 15 "certain tentative agreements respecting new contracts" were reached.

Like waves on the sea, negotiations build up to a crest and then fall. At the conclusion of the July 15 meeting, the negotiators knew that the crest had been reached, that the parties had reached agreement of the minds on the big issues, and that signed contracts would follow. So certain was Logsdon, the chief negotiator for the group of unions, that all trouble was past that when he took the written contracts on July 28 and before studying them, he was talking about scheduling a time for a signing ceremony and talking about the unions living by them. Under all the circumstances I conclude that although changes were made in the Stigall-Sebright drafts of the agreements, some of them substantive changes, the basic meeting of the minds in the negotiations was achieved on July 15.

B. *Additional facts*

In substance Respondent contended that Respondent had a right to withdraw from joint bargaining at any time at least through July 15 and that this right was preserved through Stigall's several assertions at the bargaining sessions that any company could withdraw and through a statement by the Committee's chairman early in the negotiations that any company could withdraw.[2] At the September 17, 1959, meeting of the employer group, attended by some 20 to 25 employers, a proposal that for

[2] Fuller's comment occurred in connection with the "withdrawal" of the Edward Edinger Company. The Committee had bargained for this company in all the negotiations since 1954, and although this company did not sign the September 17, 1959, document, it nevertheless wrote the Committee on April 27, 1960, reserving the right to withdraw. About the May 12 session Fuller told the negotiators Edinger had withdrawn All negotiators impliedly consented to the withdrawal. This was far different from Respondent's later withdrawal, when the unions did not consent.

the 1960 negotiations all employers agree to be bound by the results of the Committee's bargaining and that the Committee "sign for the industry" was overwhelmingly defeated, the employer group assuming that unless they agreed among themselves to be bound by the results of joint bargaining they were not thusly bound. There was no evidence that the results of these deliberations were ever conveyed to the unions of the Federated Council. Shortly prior to the beginning of the 1960 negotiations, there were conversations among the union group and a conversation between one of the union representatives and Stigall as to the advisability of having what they considered to be a more binding arrangement within each group and between the two groups. The union representative indicated he thought all the unions except the Quarry Workers' Locals could get together. Stigall indicated he did not think it was possible for the companies to get together.

This feeling of impossibility, and Respondent's contention that the scope of the appropriate unit must properly be confined to each single employer rather than the group of employers, grew out of the history of withdrawals, the "in-and-outism" in the negotiations since about 1954.

The facts are not in dispute. At no time did all of the employers or all of the unions in the industry in the area join in the joint bargaining. Apparently one union, the Journeymen Stonecutters Association, always bargained separately from the Federated Council.

In 1954, 18 companies bargained through the Committee; in 1954–55, 23 employers; in 1956, 23; in 1957, 24, in 1958, 23; in 1960, 23. Of this group of companies, 13 were in all 6 negotiations, 5 were in 4 negotiations, 5 were in 3 negotiations, and 1 was in 2 negotiations.

About halfway through the 1954 negotiations,[3] two employers, Respondent and Heltonville Limestone Company, withdrew from group bargaining, which continued on, and then those two companies bargained to contracts with a number of unions The following year both of these companies were back in group bargaining without penalties being levied against them and without charges being filed against them. I conclude that the integrity of the multiemployer units was not destroyed and that the withdrawals were with the consent of all parties.

In March 1955 some 23 companies signed a 3-page "Indiana Limestone Industry Employer Agreement on Labor Relations" running until January 1, 1960, providing *inter alia*, that for 2 years the Committee be given irrevocable authority to bind them in negotiations and to enter into binding contracts on their behalf. The several clauses of the preamble provided that:

> WHEREAS, the Employers recognize that each of them has a duty imposed by statute to bargain collectively in good faith . . . and that the selection of the . . . Committee . . . as the sole and exclusive representative of the Employers and each of them for such purposes is the most effective, economical, expeditious method of fulfilling this duty; and
>
> WHEREAS, in contract negotiations . . . of any Employer it is determined to be in the best interests of the Employers that all such negotiations . . . by and on behalf of said Employers or any of them . . . be by the . . . Committee . . . as the sole and exclusive representative of said Employers and each of them. . . .

During the first negotiations under this employer agreement, in 1955, while negotiations were proceeding under a subcommittee, the chairman of the subcommittee, Stigall, and two members of the Committee, including Respondent's then president, met separately and bargained to a contract with the two Quarry Workers Locals Then the companies bargaining through the Committee and the other unions went along with this settlement and executed contracts—all except one company, Bedford Stone Service, which refused to sign the contracts As Bedford Stone Service was back in group bargaining in 1956 and 1957, with no penalties or charges made against it for withdrawing, I conclude that its refusal to sign the 1954 contract did not destroy the integrity of the multiemployer units

In 1956 the Committee, representing 23 employers, including Respondent, negotiated with only 1 union, the Journeymen Stonecutters Association. There was no withdrawals and all 23 companies signed the negotiated agreements.

In 1957 the Committee, representing 24 employers, including Respondent, negotiated with 3 unions, the 2 Quarry Workers Locals and the Journeymen Stonecutters

[3] At this time Respondent's president resigned as chairman and a member of the Committee.

Association, whose contracts were up for renewal. During these negotiations the three unions were not represented by the Federated Council. There were no withdrawals and all 24 companies signed the negotiated agreements.

In 1958 the Committee, representing 23 employers, including Respondent, was negotiating jointly with 4 unions, whose contracts were up for renewal, including the Engineers. On July 30 the Committee and three of the unions reached agreement of the minds, but on that day no agreement had been reached between the Committee and the Engineers. On July 30 Engineers struck all of the companies (including Respondent) except six, who signed contracts with Engineers and continued working. Two weeks later Engineers was willing to accept a contract on the basis of the last offer the companies had made prior to the strike, and, under pressure from Respondent, the other five companies signed contracts on that basis. As three of the six companies which abandoned group bargaining, and the Engineers who also abandoned it, were back in group bargaining in 1960, with no penalties or charges made against them for withdrawing, I conclude that their withdrawal was with the consent of all parties and that the withdrawals did not destroy the integrity of the multiemployer bargaining units.

In 1959 no contracts were up for renewal, and there were no negotiations.

In 1960, more or less concurrently with the Committee's negotiations with the Federated Council on behalf of 23 companies, the Committee, presumably on behalf of the same 23 companies, was also negotiating with the Journeymen Stonecutters Association. On July 25, nine companies withdrew in writing from bargaining through the Committee "due to the lack of progress in current negotiations." The record does not reveal how far along the negotiations were at this time. As these negotiations involved concurrent group bargaining but not the negotiations involved herein, I do not find that these withdrawals affected the integrity of the multiemployer unit involved herein.

As has been seen above, except for the withdrawals listed above, the negotiations resulted in written contracts. Thus in 1954, 16 of 18 companies bargaining with the "Federated Council group" of presumably 7 unions, concluded negotiations through the Committee and executed approximately 112 contracts. In 1954–55, although the settlement was achieved through on-the-side bargaining with 2 of the 6 unions in the joint bargaining, the Committee on behalf of 23 employers and the 4 other unions accepted the settlement and approximately 92 contracts were signed. In 1956, 23 executed agreements resulted from multiemployer bargaining with the Journeymen Stonecutters Association. In 1957, 72 executed agreements resulted from multiemployer bargaining. In 1958, 69 executed agreements resulted from multiemployer bargaining. In 1960, 22 of the companies negotiating on a multiemployer basis with the Federated Council representing 7 unions executed approximately 154 contracts resulting from multiemployer bargaining, and approximately 14 more contracts resulted from the multiemployer bargaining with the Journeymen Stonecutters Association. Thus, since 1954, approximately 536 executed contracts have resulted from multiemployer bargaining. The word "approximately" in this paragraph allows for the fact that some companies did not employ work classifications covered by contracts with some unions and so did not sign those contracts.

This approximate number of executed contracts has resulted from group bargaining in some 7 years, despite occasional withdrawals, individual bargainings, and strikes, as given above. That approximately 536 contracts should have resulted from multiemployer bargaining, and that a large number of companies, for the most part the same ones, including Respondent, continued to bargain on a multiemployer basis the years of and the years succeeding to the irregularities in group bargaining, is highly persuasive to me of much stability in labor relations and that, as stated above, viewed historically the overwhelming preponderance of the evidence proved that the Employer group including Respondent who was an active member of that group throughout the years, unequivocally manifested a desire to be bound in collective bargaining by group rather than individual action.

Respondent employs employees represented by six of the unions represented in the Federated Council, namely Local 93, Quarry Workers #21471, Quarry Workers #21469, Engineers, Blacksmiths, and Machinists. The included categories of employees represented by each of these unions were listed in paragraphs 6(a) and (b). 8(a) and (b), 10(a) and (b), 12, 14, and 16(a) and (b) of the complaint and were admitted to be correct in the answer At the hearing, Respondent conceded that at all times material herein each union represented a majority of the employees

in the included categories whether the appropriate unit be groupwide or only employerwide. This proceeding has no issue as to majority or included categories of employees, but only the question as to whether the appropriate unit is single employerwide or multiemployerwide.

Conclusions

As has been seen above, despite withdrawals from time to time, bargaining in the Limestone Industry in Monroe and Lawrence Counties, Indiana, has persisted principally on a group rather than an individual basis—the vast majority of the companies choosing, for reasons of their own, to continue their bargaining on a group basis during years some companies withdraw, and choosing to permit without penalty the reentry into group bargaining of those companies which had earlier withdrawn.

Despite any irregularities by companies and unions from multiemployer bargaining in years gone by and despite their own desires not to be bound by the results of the Committee's negotiations, the companies, including Respondent, nevertheless *conducted* their 1960 negotiations with the Federated Council on a *group* rather than an individual basis, thereby manifesting their intent to be bound in group bargaining during those negotiations, and thereby preserving the integrity of the multiemployer bargaining unit In advance of the 1960 negotiations the Committee sent one member of the Federated Council's negotiating committee the list of the 23 employers, including Respondent, who would be "represented" by the Committee during the 1960 negotiations; and early in the negotiations, when the question arose as to which companies the Committee was bargaining for, the chairman of the committee showed the negotiators for the unions the document of September 17, 1959, bearing the signatures of the 23 companies, including Respondent.

When, in early June 1960, President Hauck asserted to three members of the Committee his approval of the Committee's conduct of the negotiations thus far and said that nevertheless he reserved the right to withdraw at a future time, Respondent nevertheless *continued* bargaining on a multiemployer basis for eight bargaining sessions from early June to July 15.

When, early in the 1960 negotiations, the Edward Edinger Company "withdrew" and Fuller observed to all the negotiators that any company had the right to withdraw, Respondent did not withdraw but *continued* negotiating on a multiemployer basis during bargaining meetings on June 23 and 29 and July 14 and 15. The unions consented to Edinger's withdrawal and filed no charge concerning it.

Then, on June 22, in an effort to bolster the hand and spirit of group bargaining, Hauck appeared before all the negotiators, including the Federated Council's negotiators, and reasserted his adherence to and support for group bargaining—as has been seen above. Nothing President Hauck said on this occasion remotely suggested the possibility that Respondent would refuse to sign a negotiated agreement. Thereafter Respondent *continued* to bargain on a multiemployer basis during negotiation sessions June 23 and 29 and July 14 and 15.

Throughout the negotiations Stigall had indicated that Respondent was against inclusion of work-crew clauses. Thus he had taken positions on behalf of his company. It cannot therefore be said that he was not representing his company at the negotiations. On July 15, knowing the contents of Hauck's letter from 10 o'clock on, Stigall sat through this entire bargaining day, which everybody knew to be crucial, participating in the discussion, and did not disclose the contents of Hauck's letter to the union representatives, thus permitting the union representatives to believe, or at least to hope, that Respondent, "the largest employer in (Limestone) belt," [4] would, despite its opposition to the work-crew provision throughout the negotiations, capitulate or at least adjust and, with the rest of the companies (as the unions hoped), accept and sign contracts which resulted from the joint bargaining.

Thus, Respondent continued during this entire crucial day's bargaining and up to the point that the two sides reached a meeting of the minds, to bargain on a multiemployer basis.

As has been seen above, a principal point of contention throughout the negotiations was the question of inclusion or exclusion of work-crew clauses, the unions being for inclusion and Respondent being for exclusion. Still Respondent did not withdraw from multiemployer bargaining but by *continuing* in group bargaining showed its intention to take its chances that in the end it would prevail and keep the work-crew clauses out of the contract.

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[4] At the bottom of Respondent's letterhead appears the line, "World's Largest Producers of Building Stone."

Under all the circumstances of this case, and upon the entire record considered as a whole, I find and hold that Respondent's withdrawal from the 1960 negotiations came too late, coming as it did at the time meetings of the minds for new contracts were reached. As the Board said in *Anderson Lithograph Company, Inc., et al.*,[5] ". . . to permit an individual member-employer to qualify or reject an agreement made by the multi-employer group with which he was then affiliated would render the general and widely recognized practice of multi-employer bargaining virtually valueless."

Further, Respondent's withdrawal was equivocal, at best. It withdrew from the 1960 negotiations, as all understood, but it did not unequivocally withdraw from multiemployer bargaining. After July 15 its personnel director, Stigall whose selection and retention as a member of the Committee was obviously related to his connection with Respondent, was not withdrawn by Respondent and he continued serving the Committee up to at least the hearing herein.[6] He helped draft the negotiated agreements for the other companies to sign even though his company had indicated it would not sign; and he attended two of the three [7] meetings between the Committee and the Federated Council after July 15, including the signing ceremony. Although Respondent ceased paying dues to the Committee as of July 15, it did not inform the Committee that it was *withdrawing from the Committee for future years.* Further the record strongly suggested (but did not completely prove) that in 1960, after July 15, Respondent continued to be represented by the Committee in the latter's negotiations with the Journeyman Stonecutters Association. From past practice in the industry, all knew of the great likelihood that Respondent would be back in group bargaining the next time there was group bargaining.

On the entire record, I conclude that Respondent did not make it clear that it was withdrawing from multiemployer bargaining in the future (but only for the present) and that its withdrawal was not, therefore, unequivocal. At most Respondent's withdrawal was temporary only, and its sole motivation was to avoid the results of the group bargaining, to avoid accepting and signing the agreements which resulted from the group bargaining. Under all the circumstances I find that Respondent was estopped [8] from contesting the appropriateness of the multiemployer unit and was estopped from withdrawing from the 1960 group negotiations just to avoid its obligation to accept and enter into the negotiated contracts. Section 8(d) of the Act requires the "execution of a written contract incorporated any agreement reached if requested by either party. . . ." Accordingly, I find that by purporting to withdraw from group bargaining on July 15, 1960, and by refusing to sign and adhere to the appropriate contracts executed by the other companies represented by the Committee, on August 5, 1960, Respondent violated Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations of Respondent described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

A question in the 1960 negotiations was the inclusion or exclusion of so-called "agency shop" clauses in the contract. The record does not reflect that this question

[5] 124 NLRB 920, enfd *sub nom. N L R B.* v. *Jeffries Banknote Company,* 281 F. 2d 893 (C A 9).

[6] As has been seen above, when Respondent withdrew in 1954, its president resigned as chairman and as a member of the Committee.

[7] He did not attend the August 1 meeting at which the Committee and the unions ironed out their differences over what stood between them and contracts For reasons undisclosed by the record Stigall was not informed that this meeting was taking place. Nor was there any evidence in the record that Stigall ever made it clear to the union representatives that when he helped draft the contracts and attended the signing ceremony he was in no way representing Respondent Perhaps the other parties suspected he was representing Respondent and his presence would somehow impede chances of concluding written contracts

[8] See *Cosmopolitan Studios, Inc*, 127 NLRB 788, and cases cited in footnote 5 therein See also *Detroit Window Cleaners Union, Local 139 of the Building Service Employees' International Union, AFL–CIO (Daelyte Service Company)*, 126 NLRB 63, 65

attained the status of a major issue. It did, however, hang in doubt until sometime during July 15 when as a part of the overall settlement it was decided to include the clauses.

Insofar as the record reflects, Respondent did not contend during the 1960 bargaining that the "agency shop" clause being discussed was an illegal clause in Indiana, a "right-to-work" State, nor was any such claim made during the hearing herein or in Respondent's original, thorough, 86-page brief. Never until a supplemental brief and a reply brief filed with permission long after the hearing did Respondent attempt to inject the alleged illegality of the "agency shop" clause as a substantive defense to the refusal to bargain complaint. This was no doubt occasioned by the fact that the Board's "agency shop" decision [9] was handed down after the expiration of the time for filing briefs herein. Whatever the reason, the General Counsel was surprised and properly protested the injection of that defense at that late date. As under the circumstances this desired defense was not litigated and the General Counsel was not afforded an opportunity to litigate it with evidence, cross-examination, and oral argument; and as Respondent by its conduct waived any claim based on this defense, I have not included this defense in my consideration of this proceeding. However, the matter does bear upon the remedy.

The normal remedy in a situation such as the present is that Respondent redress the situation by signing the contracts negotiated on its behalf by the Committee.[10] Here the negotiated contracts included "agency shop" clauses, but clauses which differed from the specific clause considered by the Board in the *General Motors* case. I take official notice of the fact that as of the time this is written a motion for reconsideration is now pending before the Board in the *General Motors* case. Under the present state of the law the burden is upon the unions to decide in the first instance whether the "agency shop" clauses in the negotiated contracts were unlawful and if so to withdraw them or alter them to make them lawful. In order to remedy the unfair labor practices found above to have been committed by Respondent I shall recommend that upon request by the unions Respondent shall sign the contracts covering its employees executed by the other companies covering employees in the same categories, on August 5, 1960, providing that such contracts include no "agency shop" clauses which are in fact unlawful.

Upon the basis of the foregoing findings of fact, and upon the entire record, I make the following:

CONCLUSIONS OF LAW

1. Indiana Limestone Company, Inc., is engaged in commerce within the meaning of the Act.

2. The labor organizations named in section II, above, are labor organizations within the meaning of Section 2(5) of the Act and within the meaning of Section 9(a) of the Act; and at all times material herein each of them has been the exclusive representative for purposes of collective bargaining of the respective categories of employees listed in paragraphs 6(a) and (b), 8(a) and (b), 10(a) and (b), 12, 14, and 16(a) and (b) of the complaint—employees of all the employers, including Respondent, on whose behalf the Committee negotiated with the Federated Council during 1960. The employees of all these employers for whom each union is the exclusive representative constitute a separate appropriate unit for purposes of collective bargaining within the meaning of Section 9(b) of the Act—six appropriate units in all.

3. On or about July 15 and August 5, 1960, and thereafter, by purporting to withdraw from group bargaining, and by refusing to accept as binding upon it and by refusing to sign and adhere to the contracts negotiated on its behalf by the Committee with the Federated Council, Respondent has refused and is refusing to bargain within the meaning of the Act, thereby engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

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[9] *General Motors Corporation*, 130 NLRB 481.

[10] See, e.g., *Anderson Lithograph Company, Inc., et al*, 124 NLRB 920; *Cosmopolitan Studios, Inc., supra.*